

April 1, 2025

Statement of Pacific Legal Foundation before the Oregon Senate Committee on Health Care in opposition to SB 1162, *Relating to certificates of need for hospice programs*

Chair Patterson and members of the Committee:

My name is James Manley, and I am State Policy Chief at Pacific Legal Foundation. PLF is a nonprofit public interest law firm dedicated to defending Americans' liberties when threatened by government overreach and abuse. Since our founding 50 years ago, we have been helping Americans fight for their constitutional rights in courthouses and legislatures across the country. We have won 18 cases at the United States Supreme Court, and helped enact more than 50 laws in legislatures across the country.

Part of PLF's work includes supporting patients and the healthcare entrepreneurs who want to fill healthcare needs in their communities, but are restricted by certificate of need (CON) laws. For example, we represent a midwives in Iowa who want to open the state's first birth center.¹ Although their patients are desperate for this service, and our clients are trained to safely staff a birth center, Iowa's CON laws make it impossible to open. PLF has also worked with legislators in more than a dozen states to reform and repeal CON laws.

Research Shows this Bill will Hurt Patients

Oregon has 19 CON requirements today.² This bill proposes adding a CON requirement to open, expand, or relocate a hospice program. The preamble notes that bill is intended to ensure "equitable distribution, quality, and financial sustainability of hospital services across Oregon." Unfortunately, CON laws fail to achieve any of these goals.

¹ See <https://pacificlegal.org/case/certificate-of-need-birth-center-iowa/>

² <https://www.mercatus.org/publication/oregon-and-certificate-need-programs-2020>

“Few state policy experiments have been as thoroughly examined as CON laws in healthcare.”³ CON laws have been so well studied, in part, because 40% of the nation’s population live in a state with zero or very limited healthcare CON laws, making it easy to compare outcomes. The results are not mixed. CON laws have been an abject policy failure.⁴ Instead, “the balance of evidence suggests that these regulations increase spending, reduce access to care, undermine quality, and fail to ensure care for underserved populations.”⁵

This could explain why every presidential administration since Reagan’s has publicly called on states to end their CON programs. For example, during the Obama Administration, the U.S. Department of Justice (DOJ) and the U.S. Federal Trade Commission submitted comments supporting CON repeal in Virginia.⁶ And in 2023, President Biden’s DOJ submitted testimony supporting a bill to fully repeal Alaska’s CON laws.⁷

Researchers have specifically studied hospice and concluded:

- States with CON laws have fewer hospice programs.⁸
- Residents in states with CON laws travel farther to access hospice services.⁹

³ See Matthew D. Mitchell, *Certificate-of-Need laws in healthcare: A comprehensive review of the literature*, Southern Economic Association (May 2024), <https://doi.org/10.1002/soej.12698>

⁴ Mitchell, n. 3 (collecting all known academic studies of CON laws and concluding that “the accumulated evidence is overwhelming that CON laws do not their purpose.”)

⁵ Mitchell, n.3.

⁶ See <https://www.justice.gov/atr/case-document/file/788171/dl?inline>

⁷ See <https://www.justice.gov/atr/file/1302691/dl?inline>

⁸ Silveira, M.J., Connor, S.R., Goold, S.D., McMahon, L.F. & Feudtner, C. (2011) *Community supply of hospice:*

does wealth play a role? *Journal of Pain and Symptom Management*, 42(1), 76–82. <https://doi.org/10.1016/j.jpainsymman.2010.09.016>

⁹ Carlson, M. D., *et al.* (2010). Geographic access to hospice in the United States. *Journal of Palliative Medicine*, 13(11), 1331–1338. <https://doi.org/10.1089/jpm.2010.0209>.

- Having fewer hospice programs increases overall healthcare spending. Hospices are associated with savings of about \$2,309 per Medicare user.¹⁰ Based on these savings, “each hospice foregone in a market area represents \$230,000 in potential annual savings lost.”¹¹

Research also confirms that CON laws fail to increase access to care for underserved populations. For example:

- Uninsured patients are more likely to pay out of pocket in states with CON laws.¹²
- There is no evidence of cross-subsidization and no evidence that CON laws increase charity care.¹³
- Safety-net hospitals in states without CON laws had higher margins than safety-net hospitals in states with CON laws.¹⁴

Other recent publications by the Kaiser Family Fund and Aspen Institute have also recommended that states repeal or reform CON laws.¹⁵

¹⁰ Taylor Jr, D. H., et al.(2007). What length of hospice use maximizes reduction in medical expenditures near death in the US Medicare program?. *Social Science & Medicine*, 65(7), 1466–1478. <https://doi.org/10.1016/j.socscimed.2007.05.028>.

¹¹ Conover, C. J., & Bailey, J. (2020). Certificate of need laws: a systematic review and cost-effectiveness analysis. *BMC Health Services Research*, 20, 748. <https://doi.org/10.1186/s12913-020-05563-1>.

¹² Custer, W. S., *et al.* (2006). Report of Data Analyses to the Georgia Commission on the Efficacy of the CON Program. https://scholarworks.gsu.edu/cgi/viewcontent.cgi?article=1017&context=ghpc_reports.

¹³ Stratmann, T., & Russ, J. (July 2014). *Do Certificate-of-Need Laws Increase Indigent Care?*. (Working Paper No. 14-20). *Mercatus Center at George Mason University*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3211637.

¹⁴ Dobson, A., *et al.* (2007). An Evaluation of Illinois’ Certificate of Need Program. <https://cgfa.ilga.gov/Upload/LewinGroupEvalCertOfNeed.pdf>.

¹⁵ State Efforts to Control Healthcare Costs: Lessons Learned and Insights for the Future, 25–27 <https://www.aspeninstitute.org/wp-content/uploads/2024/05/HMS-State-Efforts-to-Control-Healthcare-Costs-R3-1-1.pdf>; <https://www.kff.org/health-costs/issue-brief/ten-things-to-know-about-consolidation-in-health-care-provider-markets/>

Recent Legislation Around the Country

Adding a new CON requirement is also contrary to the national trend, which has been to fully or partially repeal CON laws—not add more CON requirements. Some major CON reforms since 2023:

2025:

- Wyoming repeals CON for nursing homes (its lone remaining healthcare CON).
- Kentucky repeals CON for birth centers.
- Bills to reduce CON burdens are currently pending in CT, HI, IA, FL, MD, ME, MI, MO, NE, NC RI, TN, VT, WA, WV.

2024:

- Oklahoma repeals CON for everything except nursing homes.
- Georgia enacts significant CON reforms, including for birth centers, psychiatric facilities, rural hospitals, substance use treatment programs, and more.
- Tennessee enacts significant CON reforms, including for burn services, neonatal intensive care, open heart surgery, some imaging equipment, and more.

2023

- South Carolina repeals CON for everything except nursing homes.
- North Carolina enacts significant CON reforms, including for mental health facilities, rehabilitation facilities, and increasing the expenditure thresholds that trigger CON review.

Based on the foregoing, Oregon would be moving in the wrong direction by advancing this bill. PLF urges this Committee to follow the research and vote do not pass. Thank you for the opportunity to testify. I am happy to answer any questions; my contact information is listed on page one.

Respectfully,



James M. Manley
State Policy Chief